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June 21, 2013

Via ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, DC 20554

Re: Notice of Ex Parte Presentation
CG Docket No. 02-278

Dear Ms. Dortch:

On June 19, 2013, Glenn Richards and Lauren Lynch Flick of Pillsbury Winthrop Shaw Pittman LLP, counsel to YouMail, Inc. ("YouMail"), along with Alex Quilici, Chief Executive Officer of YouMail, met with Rebekah Goodheart of Chairwoman Clyburn's office and Mark Stone of the Consumer and Governmental Affairs Bureau to discuss the YouMail Petition for Declaratory Ruling ("Petition"), filed April 19, 2013, concerning YouMail's advanced voicemail services and the Telephone Consumer Protection Act ("TCPA").

In the meeting, YouMail provided an overview of the four basic YouMail virtual secretary functions of greeting callers by name, rejecting unwanted callers, transcribing voice messages into writing, and responding to calls with an auto-reply text. YouMail explained that the auto-reply text function is simply a more efficient means of taking the steps individual users already can take -- clicking on a telephone number contained in the "received call" or "missed call" log of their smartphones and either texting or redialing that number in response to the missed call. YouMail explained that consumers routinely send a return text when they have missed a call or recognize that a voice mail has been left by the caller but cannot immediately return the call because they are in a meeting or otherwise occupied. The text alerts the caller

not to call repeatedly when an initial call cannot be answered. A copy of the presentation provided is attached.

YouMail pointed out that the service has many benefits to the caller, as well as the YouMail subscriber. These include: receiving timely information about the YouMail subscriber's receipt of the message and ability to respond to it; the ability to replay the message the caller has left to be sure it was audible or that the caller has conveyed all the information he or she intended to convey and leave a new message if necessary; having a record of placing the call and leaving the message; and the ability to opt out of receiving auto-reply text messages from all or selected YouMail subscribers or opt to have future auto-replies sent by email.

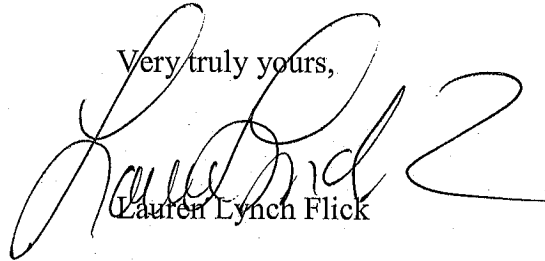
YouMail advised that despite the service's popularity and benefits to both the caller and the subscriber, YouMail has been the subject of four class action lawsuits (two remain pending) under the TCPA as a result of the auto-reply feature. These lawsuits are devastating to the company, threatening its survival and hindering its ability to innovate. In particular, the lawsuits, which also name as defendants individual officers and board members, have stopped potential investors and led to the diversion of capital and employee layoffs at a time when the company would like to expand and hire. YouMail advised that in one case, the plaintiffs have stipulated to a Declaration that the YouMail service does not have the requisite capacity to store and dial random and sequential numbers as prohibited by the TCPA, but continue to pursue the lawsuit on the theory that the service is nevertheless a prohibited automatic telephone dialing system (ATDS) because, someday, it could be redesigned to make such calls. A copy of that Declaration is attached. YouMail stated its position that such an expansive reading of the definition of ATDS did not make sense in connection with the YouMail service because it does not do anything more than an individual user can do on his or her own, which would mean that every smartphone would meet the definition of an ATDS.

YouMail also addressed the element of consent. An auto-receipt can only be sent if a caller uses a cell phone to contact a YouMail subscriber via the subscriber's cell phone number, enabling the redial function of the cell phones used. Finally, YouMail noted that it is not a "caller" under the TCPA because it does not control the timing of the sending of an auto-reply text message, its content, nor to whom it is sent. These parameters are set by the user.

Accordingly, YouMail asked that the Petition be put out on Public Notice so that the public can comment on the issues raised in it, including YouMail's request that the Commission declare that the service does not constitute a prohibited ATDS, that callers consent to receiving a response such as the YouMail auto-reply text, and that YouMail is not the calling party under the TCPA.

This notice is being filed electronically in the above docket, pursuant to Section 1.1206(b) of the Commission's rules.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lauren Lynch Flick", with a large, stylized flourish extending to the right.

Lauren Lynch Flick

cc: Rebekah Goodheart (by email)
Mark Stone (by email)

YouMail

June, 2013

Alex Quilici, CEO

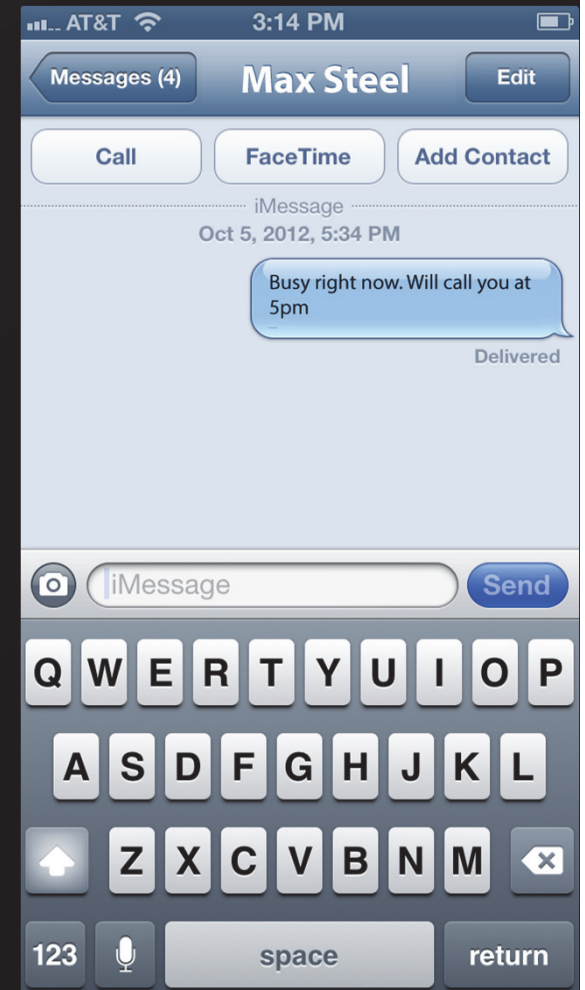
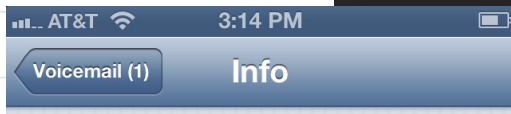
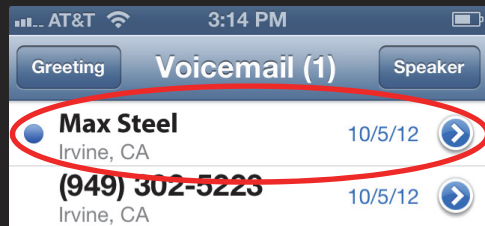
YouMail Replaces Voicemail With A Digital Secretary

- Nearly 5 million YouMail users.
- YouMail is their agent to answer calls they can't:
 - Greets callers by name or with personal greeting.
 - Rejects telemarketers and stalkers.
 - Transcribes voicemails.
 - **Replies to voicemails (the subject of TCPA lawsuits)**



YouMail:)))

Replying Has Been A Lot Of Effort



YouMail:)))

...Which Is Repeated For Each Caller



With YouMail, Set “Response” Once...

AT&T 5:33 PM

Done **Auto-Reply Settings**

Home Voicemail Greetings Contacts

[My Account](#) > [Auto-Reply Settings](#) > Sending Replies

When auto-replies are sent to callers

They Leave A Voicemail

My Contacts **Everyone Else**

Every Call Every Call

Send Auto-Replies By

☒ TXT ☐ E-Mail

What would you like included in each auto-reply?

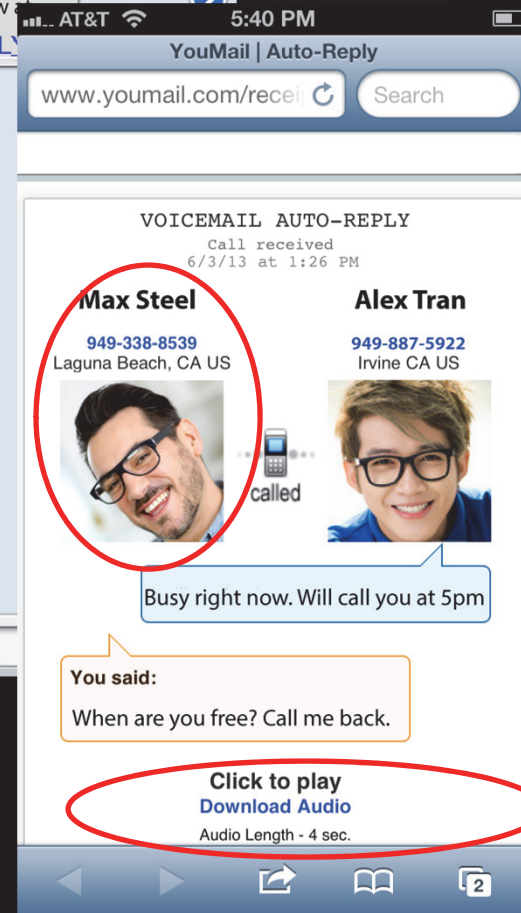
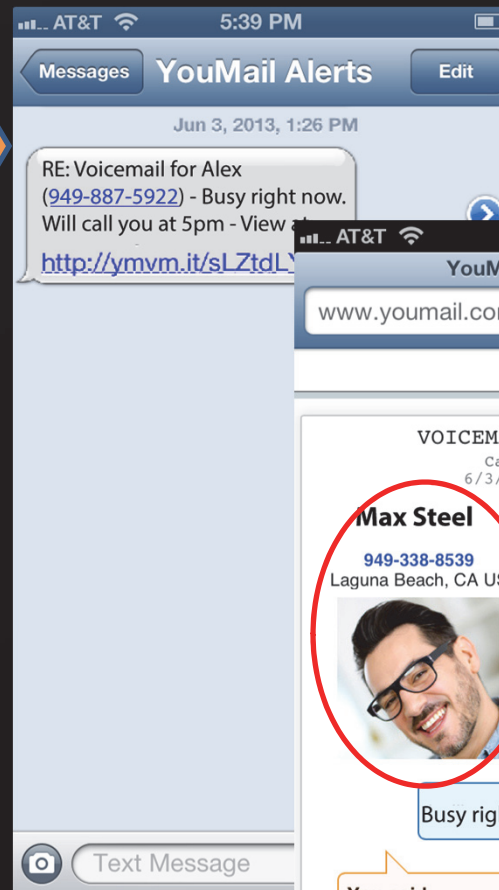
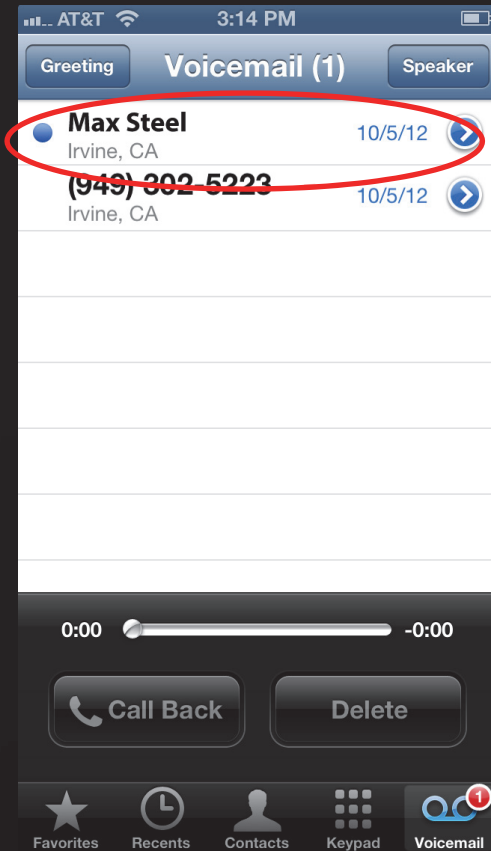
☒ Encourage unknown callers to identify themselves

☐ Show your last name (uncheck for privacy)

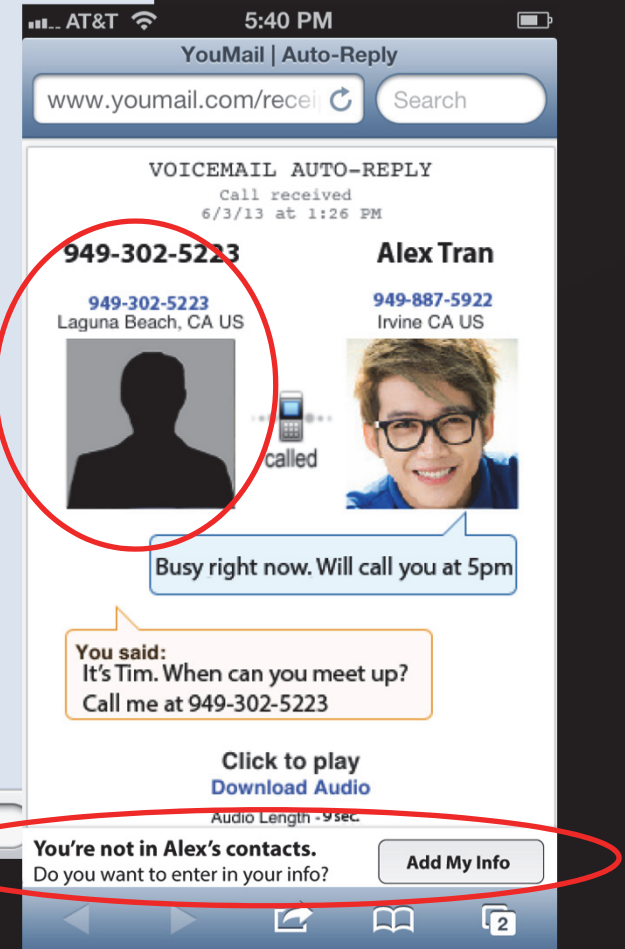
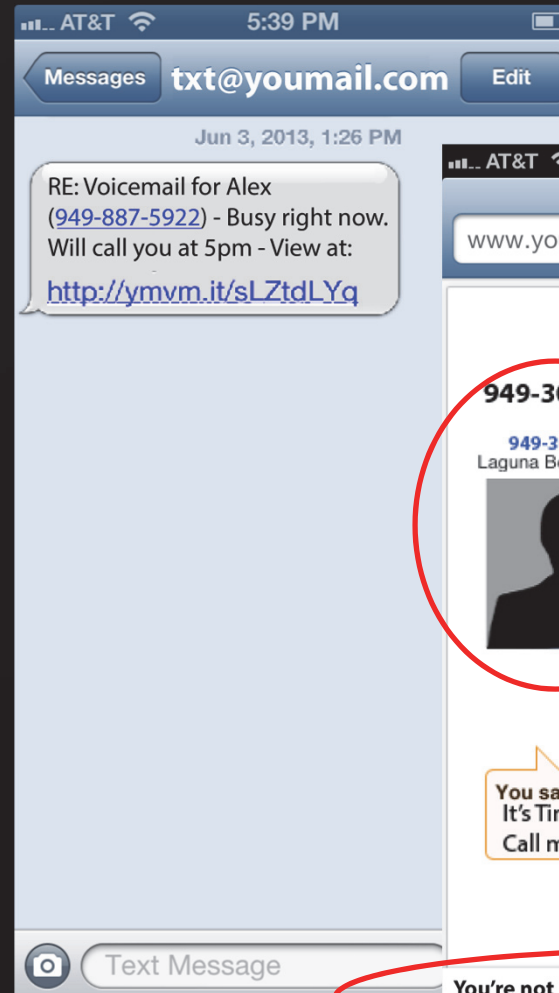
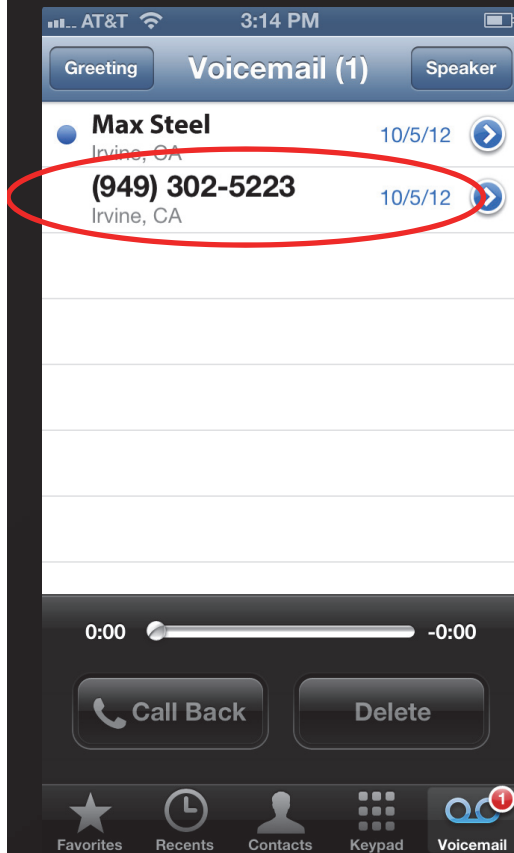
☒ Include the following custom message:

Busy right now. Will call you at 5pm.

...And YouMail Auto-Replies to Each Voicemail



...And Provides Many Caller Benefits



YouMail:)))

Summary

- YouMail sends single “Auto-reply” txt on behalf of YouMail user, only in response to caller leaving message.
- Benefits for recipient of voicemail:
 - Simplifies sending texts back to callers.
 - Works even when phone is off.
- Benefits for caller:
 - Opportunity to update address book.
 - Opportunity to listen to voicemail (e.g., bad coverage)
 - Permanent, saveable record of voicemail.
 - Easy to opt-out if undesirable.

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA**

MEGAN GOLD, on behalf of herself and
others similarly situated,
Plaintiff,

v.

YOUMAIL, INC.,
ALEX QUILICI,
MIKE RUDOLPH,
MILES VALENTINE,
ERIC VER PLOEG,
RICK PROTSKO, and
CRAIG COOPER,
Defendants.

1:12-cv-0522-TWP-TAB

Jury Demanded

Declaration of Alex Quilici

1. I am Alex Quilici, President of YouMail, Inc., the defendant in this case. I am familiar with the equipment and software surrounding YouMail's auto-reply or "receipt" feature, and am competent to testify as to the matters stated herein.

2. YouMail's auto-reply or "receipts" feature is an option for YouMail subscribers that, when "turned on" between August 1, 2012 and August 15, 2012, sent an auto-reply by SMS text message to non-customer callers who had left a voicemail for a YouMail subscriber. All YouMail customers had the capability to use this feature between and including August 1, 2012 and August 15, 2012.

3. The YouMail system runs on hardware that consists of general purpose computer servers. The *hardware* had the capacity to dial telephone numbers without human intervention if it were paired with modified or different software.

4. The *hardware* also had the capacity to (A) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial such numbers, if it were paired with modified or different software.

5. The YouMail system software during that time was programmed to send a single receipt txt-message to the calling party upon the following events:


- a. An individual caller phones a YouMail subscriber;
- b. The individual caller leaves a voicemail message for the YouMail subscriber;
- c. The subscriber's settings provide for the sending of a "receipt" from the YouMail system;
- d. The individual caller has not opted-out of receipts from the YouMail system.

6. The *software* for the YouMail system during this period was programmed in such a way that did not store or produce telephone numbers to be called, using a random or sequential number generator.

I hereby affirm under penalty of perjury that the forgoing matters are complete and correct.

6/11/2013

Date

DocuSigned by:

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Alex Quilici